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Attorneys for Defendants
C. R. Bard, Inc. and
Bard Peripheral Vascular, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

IN RE: Bard IVC Filters Products Liability
Litigation,

No. 2:15-MD-02641-DGC

**THE DEFENDANTS' SUBMISSION
OF ADDITIONAL PROPOSED JURY
INSTRUCTIONS**

This Document Relates to:

Lisa Hyde, et al. v. C. R. Bard, Inc., et al.

CV-16-00893-PHX-DGC

(Assigned to the Honorable David G.
Campbell)

The Defendants hereby submit the attached additional jury instructions for the Court's
consideration.

DEFENDANTS' PROPOSED INSTRUCTION RE: DESIGN DEFECT

In determining whether the filter is defectively designed, you must consider not only the risks associated with the product but also the benefits.

Godoy v. E. I. Du Pont De Nemours and Co., 768 N.W.2d 674, 697 (Wis. 2009) (Prosser, J. concurring)

DEFENDANTS' PROPOSED INSTRUCTION RE: DESIGN DEFECT

The balancing of risks and benefits in judging product design must be done in light of the knowledge of risks and risk-avoidance techniques reasonably attainable at the time of distribution.

Godoy v. E. I. Du Pont De Nemours and Co., 768 N.W.2d 674, 696 (Wis. 2009) (Prosser, J. concurring)

DEFENDANTS' PROPOSED INSTRUCTION RE: DESIGN DEFECT

The burden of presenting sufficient evidence of a reasonable alternative design requires proof of the availability of technologically feasible and practical alternative design that would have reduced or prevented the plaintiff's harm.

Godoy v. E. I. Du Pont De Nemours and Co., 768 N.W.2d 674, 698 (Wis. 2009) (Prosser, J. concurring)

DEFENDANTS' PROPOSED INSTRUCTION RE: DESIGN DEFECT

In determining whether the design of the filter is defective, you may consider the following factors:

- 1) Conformity of the design to the practices of other manufacturers in the industry at the time of manufacture;
- 2) the open and obvious nature of the alleged danger;
- 3) the extent of the claimant's use of the very product alleged to have caused the injury and the period of time involved in such use by the claimant and others prior to the injury without any harmful incident;
- 4) the ability of the manufacturer to eliminate danger without impairing the product's usefulness or making it unduly expensive; and
- 5) the relative likelihood of injury resulting from the product's present design.

Sumnicht v. Toyota Motor Sales, U.S.A., Inc., 360 N.W.2d 2 Wis. 1984; see also Green v. Smith & Nephew AHP, Inc., 629 N.W.2d 727, 767 (Wis. 2001) (Sykes, J. dissenting) (noting traditional factors cited in Sumnicht are comparable to Restatement (Third) test).

1 RESPECTFULLY SUBMITTED this 2nd day of October, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of October 2018, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to all attorneys of record.

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